

**Finance**

Purchasing Division
320 Chestnut Street
PO Box 1810
Wilmington, NC 28402-1810

910 341-7830
910 341-7842 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

**NOTICE**

Upon receiving this proposal by internet, email sharon.shaffer@wilmingtonnc.gov to register as a prospective respondent. Failure to register as a prospective respondent may result in your firm not receiving proposal addenda. Failure to acknowledge proposal addenda with your submittal may cause your proposal to be considered non-responsive.

November 10, 2005

**RE: Request for Qualifications - US 17 Corridor Study
RFQ No. S5-1105**

Dear Sir:

The above referenced Request for Qualifications (RFQ) will provide your firm with sufficient information to enable you to prepare and submit a proposal for services related to the above referenced project. If you wish to submit a proposal you may download the document from the City WEB site at www.wilmingtonnc.gov or contact my office.

The RFQ includes a preliminary scope of work and general terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after final selection of the consultant. The general terms and conditions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a statement shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

In order for your proposal to be considered responsive, it must include all items referenced in the RFQ and the following information:

- 1) a list of personnel including outside consultants, assigned to the project,
- 2) a list of similar projects performed in the past including the client, negotiated fee and final fee paid,
- 3) a list of current similar projects,
- 4) a description of your general understanding of the project,
- 5) a clear and concise response stating why you feel that you are the most qualified firm to perform this work, and any other information which may be helpful to the Committee evaluating the proposal. The final fee for services listed herein may be negotiated with the selected firm.

A committee will review the qualifications statements and may select the most qualified firm(s) for an interview. After the most qualified firm is determined by the City, the staff may enter into negotiations with the most qualified firm to better define the final scope of work and finalize the fee. If for any reason, the City and the selected firm cannot agree on a scope and fee, the City will enter into negotiations with the next most qualified firm.

Five (5) copies of your qualifications statement must be submitted to the Purchasing Manager, City of Wilmington, P. O. Box 1810, 320 Chestnut Street, 2nd Floor, Wilmington, NC 28402-1810 no later than 5:00 p.m., Monday, December 5, 2005, in order for it to be considered.

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the Consultant shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

I hope to receive your proposal for this work.

Sincerely,

Steven D. Bridges
Purchasing Manager

SDB/sks

Enclosure

cc: Mr. Mike Kozlosky, Senior Planner

STATE OF NORTH CAROLINA

CONTRACT NO: S5-1105

COUNTY OF NEW HANOVER

AGREEMENT BETWEEN
THE CITY OF WILMINGTON, NORTH CAROLINA
AND

THIS AGREEMENT, made this the ____ day of _____, 2005, by and between the CITY OF WILMINGTON, NORTH CAROLINA (hereinafter called "CITY"), a municipal Corporation located in New Hanover County, North Carolina; and 1. a corporation organized under the laws of the State of _____; 2. a non-profit corporation organized under the laws of the State of _____; 3. an unincorporated association having its principal place of business in _____; 4. a resident of _____; or 5. owner of a partnership organized under the laws of the State of _____, (hereinafter called "CONSULTANT").

W I T N E S S E T H:

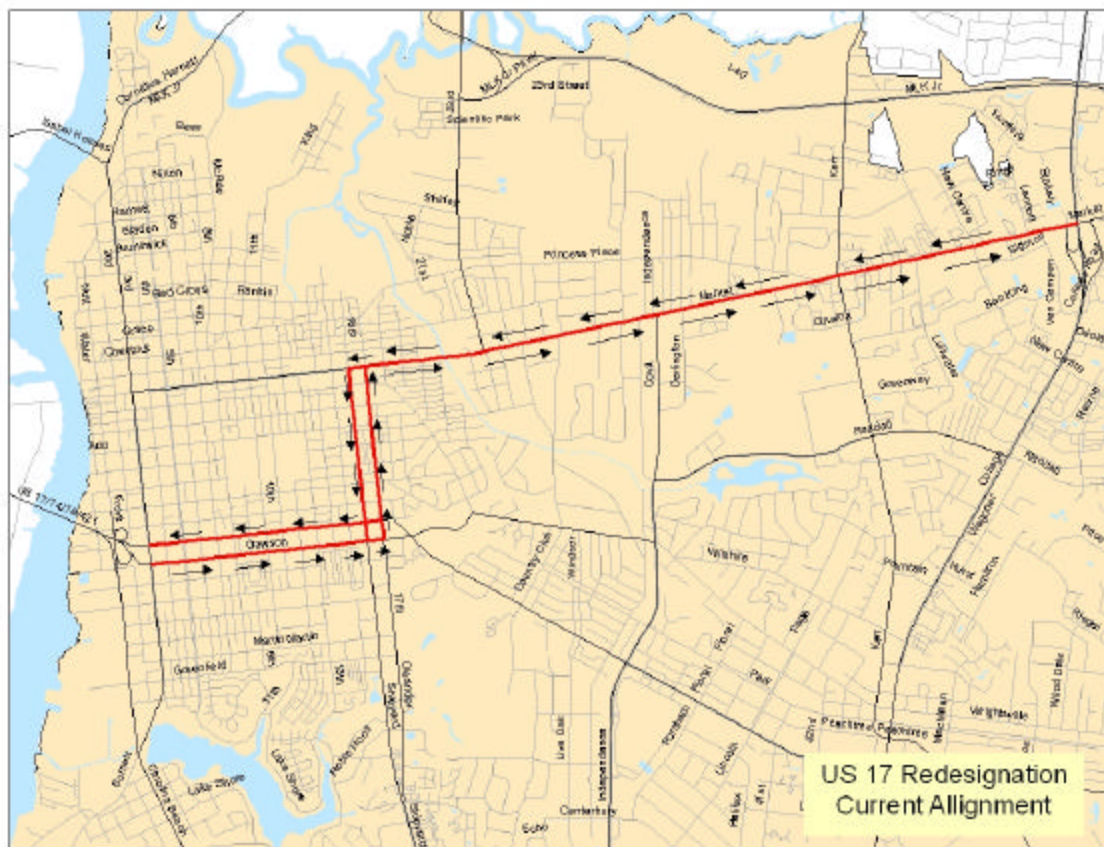
**CONSULTANT SERVICES TO PREPARE
THE CORRIDOR STUDY FOR THE RE-ROUTING AND RE-
DESIGNATION OF US ROUTE 17 BUSINESS**

I. OVERVIEW AND PURPOSE OF PLAN

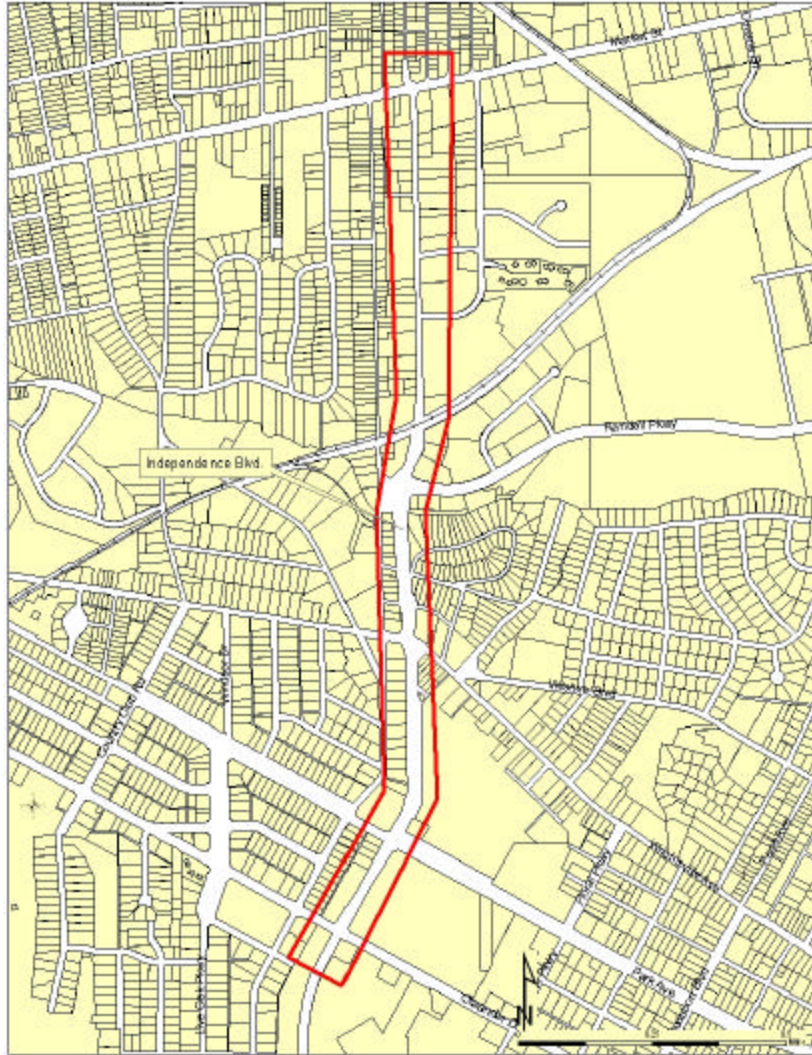
Brunswick County, New Hanover County and the City of Wilmington are growing at an exponential rate with an average annual growth rate of 2.52 percent for the MPO planning area boundary. With the development of these areas, comes the necessary construction of new infrastructure improvements. Some of the new construction that can be seen today in the region include the development of new roads and highways to facilitate the movement of through and local traffic in the region. The former Smith Creek Parkway (now named Martin Luther King Jr. Parkway) was initially planned during the 1960's, but due to financial and environmental concerns was not completed until October 2005. With the opening of Martin Luther King Parkway and other transportation facilities, new traffic patterns are emerging for commuters within and through the Wilmington Urban Area. These transportation improvements will permit the Wilmington Metropolitan Planning Organization to study and analyze alternative improvements on the existing and future facilities including Market Street,

Oleander Drive, Independence Boulevard, 16th Street and 17th Street that may improve mobility and safety within the region.

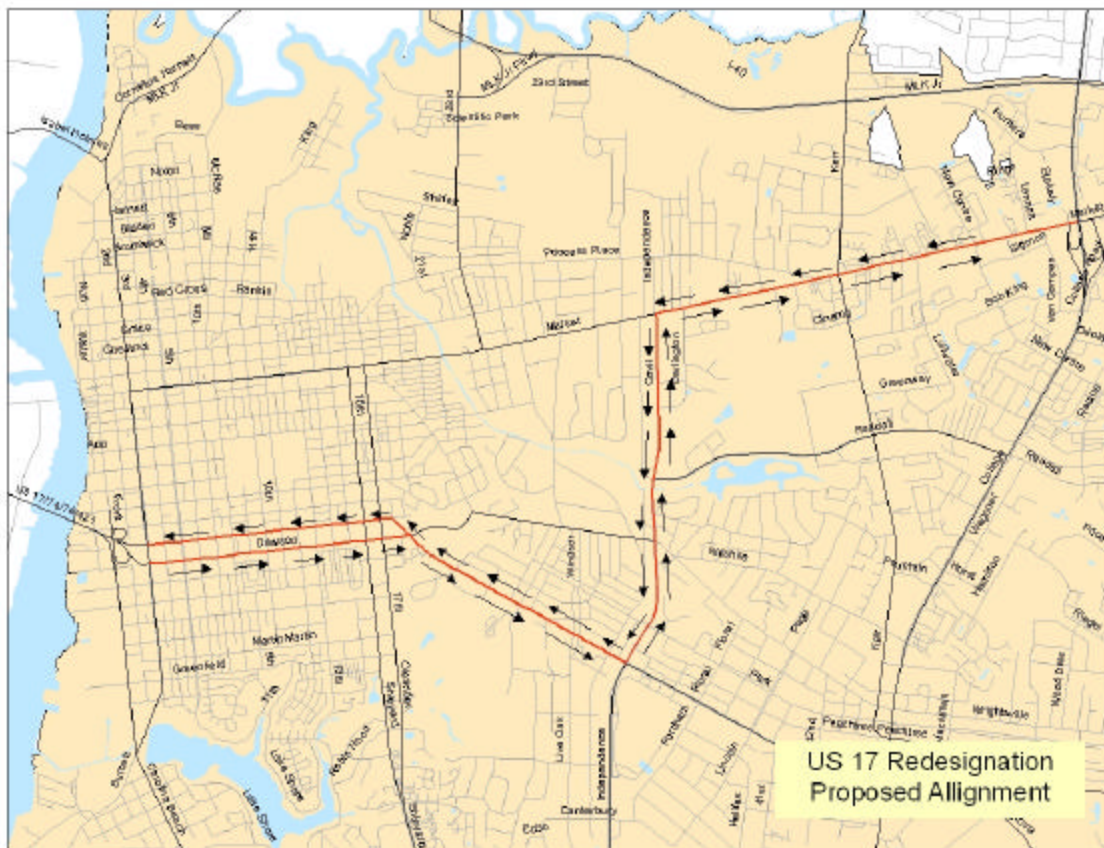
US 17 is the major north-south connector in North Carolina from Virginia to South Carolina east of Interstate 95. With the completion of the I-140 project, this route will be designated with the US 17 Bypass designation and US 17 Business will continue to be routed through the City of Wilmington. US 17 Business is currently routed westbound via Market Street to 16th Street to Wooster Street and then to the Cape Fear Memorial Bridge. US 17 Business is routed eastbound from the Cape Fear Memorial Bridge to Dawson Street to 17th Street and then to Market Street. With the opening of the Martin Luther King Jr. Parkway (US 74 designation) in October and the construction of Independence Boulevard, a new route may be more efficient for the motoring public.



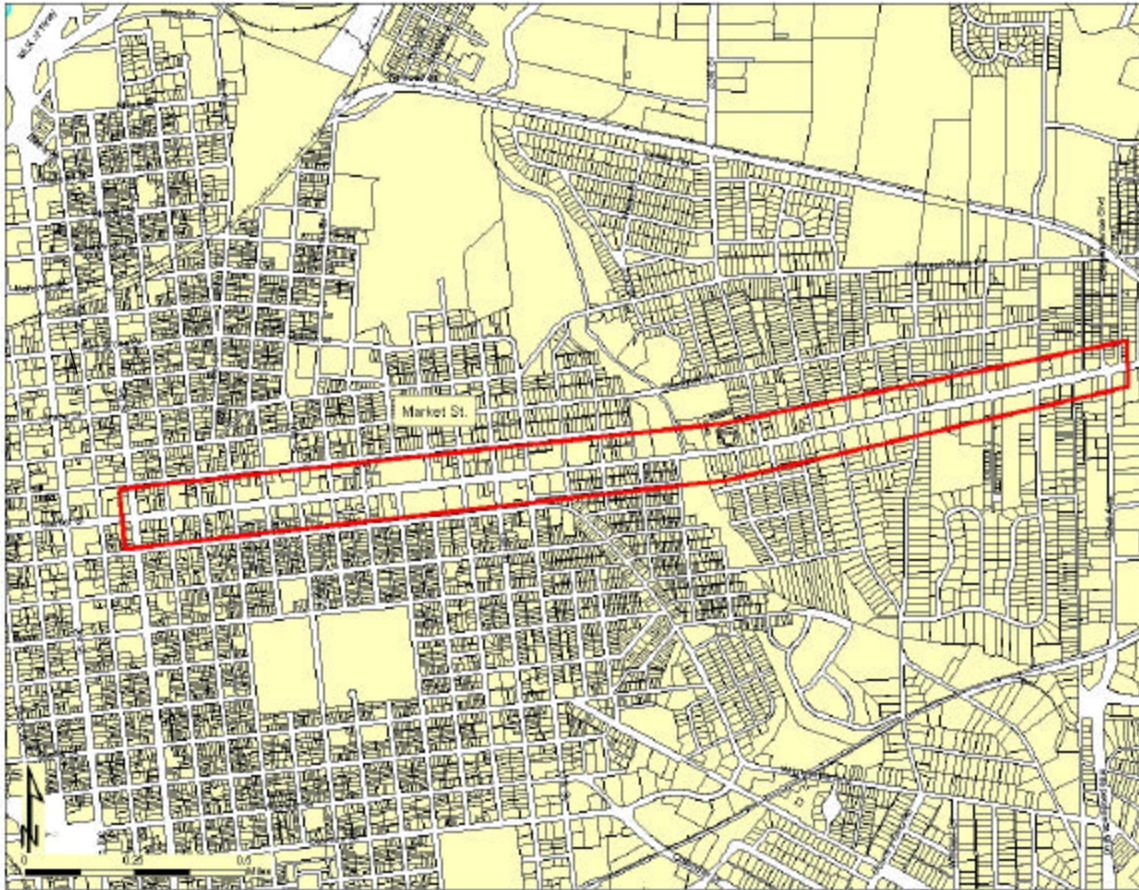
Independence Boulevard is currently a four-lane divided facility from Randall Parkway to Oleander Drive. The extension of Independence Boulevard as a multi-lane facility from Randall Parkway to Martin Luther King Jr. Parkway is currently programmed in the State Transportation Improvement Program (TIP) for planning and environmental with right of way acquisition and construction in post-years.



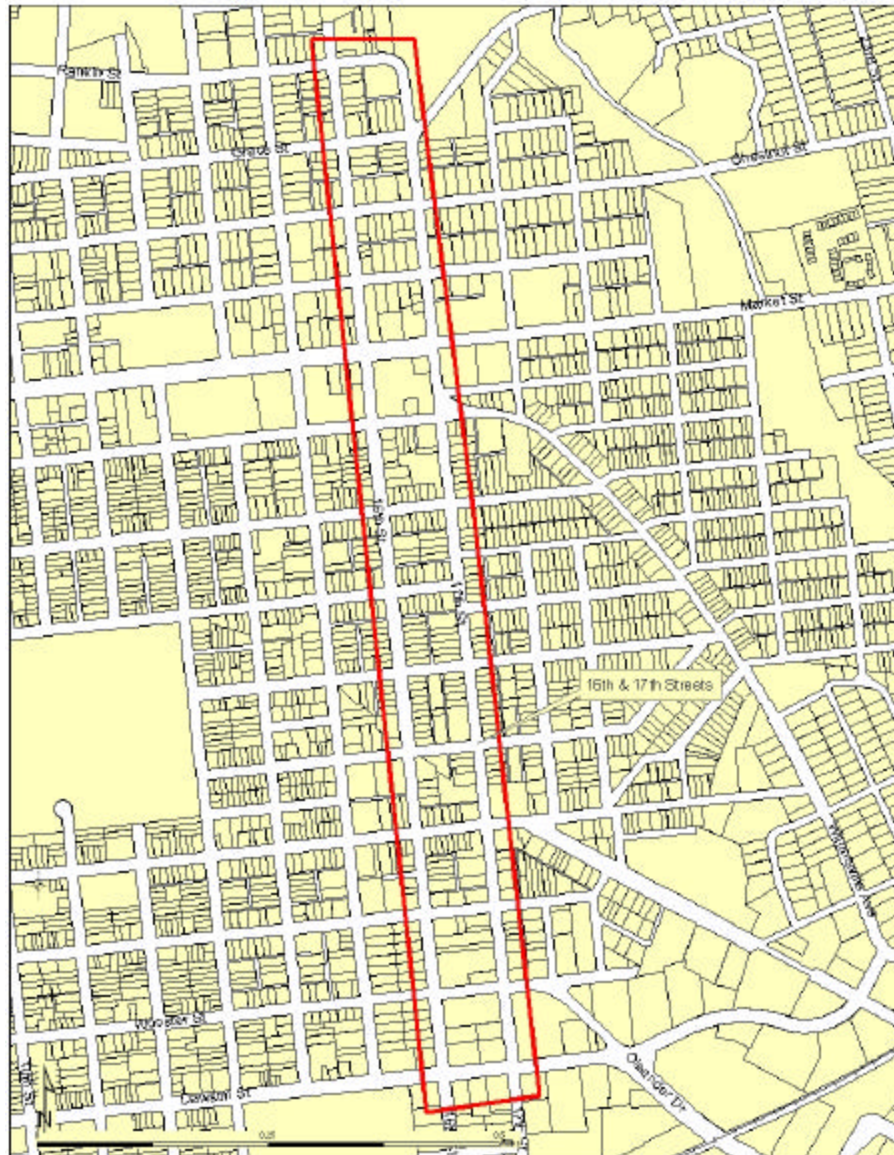
Upon completion of Independence Boulevard Extension between Market Street and Randall Parkway, a new potential route could direct traffic via Market Street to Independence Boulevard to Oleander Drive to Dawson and Wooster Streets to the Cape Fear Memorial Bridge. The new proposed corridor would provide increased safety and mobility and divert US 17 Business traffic away from the historic Market Street with its narrow lanes and large oak trees adjacent to the curb line.



With the opening of the Martin Luther King Jr. Parkway, the project is anticipated to reduce the number of vehicles traversing the City of Wilmington using Market Street. In an effort to improve safety and mobility along the Market Street corridor, the Wilmington MPO would request the evaluation of “Road Diet” measures from the intersection of Covil Avenue and Market Street to the 5th Avenue and Market Street intersection. The existing conditions along this corridor range from a five-lane divided facility with 12-foot lanes to a four lane facility with 9-foot lanes. The evaluation and recommendations for the “Road Diet” measures should include reducing the number of travel lanes, consideration of a median and of a striped bike-lane on Market Street.



Sixteenth and Seventeenth are currently one-way pairs that contain the US Business Route 17 designation. The re-designation and re-routing of traffic to Independence Boulevard should reduce the number of trips on 16th and 17th Streets within the City of Wilmington. In an effort to provide for neighborhood revitalization in this area, the consultant should consider, analyze and provide recommendations for re-verting the traffic pattern on these streets back to two-way traffic with on-street parking on both sides.



The Wilmington Urban Area MPO, in cooperation with the City of Wilmington, is soliciting qualification statements from qualified planning and engineering firms for the development of a corridor study for the Re-routing and Re-designation of Route US 17 Business as defined in the description above. With the development of this corridor and circulation plan, it is envisioned that this plan will help to ensure that the transportation system is coordinated with other plans in this area. Furthermore, the plan should serve the present and future needs of the area's residents, visitors, and businesses, as well as, maintain a high quality of life.

II. DESCRIPTION OF SERVICES

The City of Wilmington request Qualification Statements from suitable consultants to assist with a US 17 Business Corridor Plan. The following is a list of issues that must be addressed:

1. Development of a Technical Advisory Committee

The consultant shall assemble a technical advisory committee that will periodically review and provide recommendations on the study.

2. Description of Existing Network

The consultant shall research the attributes of the key infrastructure that are considered critical to move people and goods along these corridors. The consultant shall provide a description including type of facility, length, number of lanes and current and future Average Daily Traffic (ADT) and Level of Service (LOS) for Market Street, Independence Boulevard, Oleander Drive, Dawson Street, Wooster Street, 16th Street and 17th Street.

3. Land Use

The consultant will review existing and proposed land uses and local circulation elements along these corridors. This review should include existing transit routes and other planned improvements.

4. Access Management

The consultant shall evaluate the existing and future roadway designs to provide recommendations to improve access management strategies along these corridors.

5. Travel Forecasting

The consultant shall develop a future year travel forecast for the base year and a future year to include the construction of Independence Boulevard Extension that includes all existing and future land uses. All Travel Forecasting will be agreed upon by the NCDOT Transportation Planning Branch.

6. Future Improvement Design Alternatives

The consultant shall prepare conceptual future design alternatives for each of these corridors. This shall include schematic renderings and typical cross-sections for each of the design alternatives. All design standards must be in accordance with NCDOT policies and regulations.

7. Community Involvement

The consultant shall ensure that significant public involvement is included in the development of the future improvement design alternatives. As part of the development of the future design alternatives, the consultant shall conduct two public charrettes to receive citizen feedback on the proposed design alternatives.

8. Cost Estimates

The consultant shall prepare cost estimates for the future improvement design alternatives identified in the report. These cost estimates should include:

- 1) Engineering
- 2) Permitting
- 3) Mitigation

- 1) Right of Way Acquisition
- 2) Construction
- 3) Contingency

1. Policy Recommendations (Land Use/ Transportation)

The consultant shall develop policy and implementation recommendations to ensure that development, access management and the identified improvements can be installed along these corridors.

2. Implementation

The consultant shall develop and document strategies for the implementation of these roadway improvements by transportation corridor.

3. Preparation of a Draft and Final Report

The consultant shall prepare a Draft and Final Report to be submitted to the Wilmington MPO. It is anticipated that the Final Report will be considered for adoption by the Wilmington City Council and Wilmington Urban Area Metropolitan Planning Organization.

III. PLAN SCHEDULE

The consultant shall complete a draft final report within seven months of signing the contract. The technical advisory committee shall have one month to review and comment on the draft report (assume 7 copies). The consultant shall make any necessary modifications and print the final report within one month following this review period. The consultant shall deliver fifteen (15) complete copies to the MPO within 30 days. Both the draft and final report documents shall be provided in hard copy and in electronic version of Portable Document Format (PDF).

The consultant will hold two public charrettes and make presentations of the final report to the Wilmington City Council and Wilmington Urban Area Transportation Advisory Committee.

IV. QUALIFICATIONS

Teams of firms or individual firms must show experience as a firm and as individuals in developing ~~collector-street-plans~~ corridor studies. This experience should be evident through a record of successful transportation planning projects. Urban, Regional, and Community Planning or related degrees, and preferably AICP certification, are desired for the consultant project manager. It is expected that a key staff member or members on the proposed team would be professional civil engineers (PE), licensed in the State of North Carolina.

Evidence of applicable and appropriate relevant experience in similar type projects must be provided in the form of project descriptions and references. Client references will be contacted at the discretion of the consultant selection committee. Project descriptions and client contact information should be provided for a minimum of three relevant projects.

V. CONTRACTUAL REQUIREMENTS

The consultant contract will be with the City of Wilmington, acting as lead planning agency for the Wilmington Urban Area MPO. As such, attached contractual requirements of the City of Wilmington shall be adhered to.

VI. SELECTION CRITERIA

The personnel performing and in responsible charge of the work must be registered Professional Engineers, preferable in the State of North Carolina, and must have good ethical and professional standing. The firm must have the financial ability to undertake the work and assume the liability. The firm(s) must have an adequate accounting system to identify costs chargeable to the project.

North Carolina firms qualified to do the required work will be given priority consideration. A North Carolina firm is a firm that maintains an office in North Carolina staffed with an adequate number of employees capable of performing a majority of the work required.

The evaluation of firms submitting letters of interest for this work will be based on the following considerations and their respective weights:

1. The firm's prior experience in performing these types of tasks and the indicated amount of effort by the project principal's;
2. The firm's approach to performing the tasks;
3. The evaluation of the performance on any similar previous contracts with the NCDOT;
4. The firm's ability to meet the time schedule established for the work based on the ability of proposed staff and current outstanding workload.
5. The percentage of MBE/DBE participation; and
6. The percentage of the work to be performed in North Carolina and the ability of the firm's North Carolina office to perform the work.

Because the NCDOT will be participating in the selection process and with elements of the project, each qualified firm must have a current conflict of interest statement on file with the NCDOT. If you have not submitted recent qualifications or the conflict of interest statement, please attach to your proposal.

A Selection Committee will be assembled and comprised of representatives from the City of Wilmington and the North Carolina Department of Transportation (NCDOT). The Selection Committee reserves the right to reject any or all proposals if it is deemed to be in the best interest of the study.

Note, due to the Mini Brooks Act and the desire to employ a professional engineer on this project team, fee is not to be submitted at this time. However,

final fee negotiations will commence with the firm(s) selected based on this qualifications-based selection process.

VII. PROPOSAL CONTENT

Five (5) copies of a maximum twenty-five (25) page proposal shall be submitted to the City Purchasing Division at the address listed below. Once received, all proposals will be reviewed and the most qualified firm will be selected. All proposals received after the deadline will not be considered.

Any questions regarding the contractual requirements of the City of Wilmington should be directed Steve Bridges, Director, Purchasing Manager, by telephone at (910) 341-5870 or e-mail at:

Steve.Bridges@wilmingtonnc.gov

Steve Bridges
Purchasing Manager, City of Wilmington
P.O. Box 1810
320 Chestnut St., 2nd Floor
Wilmington, NC 28401

Any questions regarding the content of this RFQ should be directed to Mike Kozlosky, Senior Transportation Planner, available by telephone at (910) 342-2781 or e-mail at:

Mike.Kozlosky@ci.wilmington.nc.us

Mike Kozlosky
Senior Transportation Planner
Wilmington Urban Area MPO
City of Wilmington
P.O. Box 1810
305 Chestnut Street
Wilmington, NC 28401

The following information must be included in the proposal:

- a) Name, address, and phone number of consultant
(List office where the majority of work will be performed)
- b) List of key personnel to be assigned to the project
(Include names, titles, experience, and specific project/task-related responsibilities to be performed on this project)
- c) Schedule availability and projected completion date of project
- d) Outline of project scope by task and man-hours for key personnel
- e) Project list and references
(List similar projects names/ telephone numbers of references)
- f) Listing of any special considerations or pertinent data needs

VIII. PROPOSAL DEADLINE

All written proposals shall be submitted to the City of Wilmington Purchasing Division on or before 5:00PM on Monday, December 5, 2005.

VIX. RELEASE AND INDEMNITY

To the fullest extent permitted by law, Consultant shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by the negligent performance or nonperformance by Consultant (or by any person acting for the Consultant or for whom the Consultant is responsible). The Consultant expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the Consultant, shall in no way limit the Consultant's responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

X. PERSONNEL

It is mutually agreed that CONSULTANT is an independent contractor and not an agent of the CITY, and as such the CONSULTANT shall not be entitled to any CITY employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

XI. CONFLICT OF INTEREST

No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

XII. NON-WAIVER OF RIGHTS

It is agreed that the CITY'S failure to insist upon the strict performance of any provision of this agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.

XIII. SUSPENSION OR TERMINATION OF AGREEMENT

In the event that review of the CONSULTANT'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or conditions contained herein as a result of the CONSULTANT'S negligent errors, omissions or acts, the CONSULTANT shall be in breach of this agreement

and the CITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

The CITY shall also have the right to suspend this agreement upon written notice to the CONSULTANT. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the CONSULTANT shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the CITY. If, in the opinion of the CITY the CONSULTANT remains in violation of this agreement at the completion of the ten (10) day suspension period, the CITY shall have the right to terminate this agreement whereupon all obligations of the CITY to the CONSULTANT shall cease.

In the event this project is terminated prior to completion of the services by the CONSULTANT, the CONSULTANT shall be paid for services performed to the date of termination. (In no event will the amount due CONSULTANT in the event of termination exceed that amount set forth in paragraph _____ of this agreement. CONSULTANT shall be paid for all reimbursables, as defined herein, which are due him.)

This agreement may be terminated without cause by either party with thirty (30) days written notice.

Nothing contained herein shall prevent the CITY from pursuing any other remedy which it may have against CONSULTANT including claims for damages.

XIV. ASSIGNMENT OF AGREEMENT

It is mutually agreed by the parties hereto that this agreement is not transferable by either party without the written consent of the other party to this agreement.

XV. INSURANCE REQUIREMENTS

The amount of insurance to be provided for all coverages listed under this section shall be not less than \$1,000,000.00, unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from CONSULTANT'S performance of professional services under this contract. The CONSULTANT shall be responsible for any liability directly or indirectly arising out of professional services performed under this contract by a subcontractor which liability is not covered by the subcontractor's insurance.

The CONSULTANT shall maintain during the life of this contract WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE covering all of the CONSULTANT'S employees to be engaged in the work under this contract, providing the required statutory benefits under North Carolina Workers

Compensation Law, and Employers Liability Insurance providing limits at least in the amount of \$500,000/500,000/500,000 applicable to claims due to bodily injury by accident or disease. Whenever work under this contract includes exposure to claims under the U. S. Longshoremen's and Harborworker's Act, such coverage shall be provided by appropriate endorsement to this policy.

The CONSULTANT shall take out and maintain during the life of this contract COMMERCIAL GENERAL LIABILITY INSURANCE, including coverage for INDEPENDENT CONTRACTOR OPERATIONS, CONTRACTUAL LIABILITY assumed under the provisions of this contract, PRODUCTS/COMPLETED OPERATIONS LIABILITY and BROAD FORM PROPERTY DAMAGE LIABILITY insurance coverage. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work to be performed involves these exposures. The CITY shall be named as an additional insured under this policy. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence.

The CONSULTANT shall take out and maintain OWNER'S AND CONTRACTOR'S PROTECTIVE LIABILITY INSURANCE. The CITY shall be included as a named insured under this policy. The CITY does not require that subcontractors maintain this coverage. Unless otherwise specified, this coverage shall be written providing limits at least in the amount of \$1,000,000, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence.

The CONSULTANT shall take out and maintain during the life of this agreement AUTOMOBILE LIABILITY INSURANCE. Such coverage shall be written on a comprehensive form covering owned, non-owned and leased vehicles.

The CONSULTANT shall take out and maintain BUILDER'S RISK INSURANCE or the appropriate CONTRACTOR'S PROPERTY INSTALLATION FLOATER providing coverage in the amount of 100% of the contract amount. This coverage shall be written to cover the risks of direct physical loss or damage to properties which are customarily insured, including buildings and structures, their foundations, attachments, machinery and permanent fixtures while in the course of construction. The CONSULTANT and the CITY shall be the named insureds under this coverage, which shall also protect the interests of any subcontractor. CONSULTANT shall be responsible for any loss within the deductible applicable to this insurance.

The CONSULTANT shall take out and maintain an architect's/engineer's PROFESSIONAL LIABILITY INSURANCE policy for this project, naming as insureds any professional individual or firm acting in the capacity of a consultant. This insurance shall provide liability insurance limits of not less than \$1,000,000.00 for claims for damages arising out of the performance of professional services rendered by the CONSULTANT, and shall be maintained for a period of two years

following the date of acceptance of the project by the CITY. The CONSULTANT shall be responsible for securing and providing insurance certificates for any subcontractors employed on this project and shall furnish a copy of the insurance to the CITY. Subcontractors or consultants shall be insured to the limits referenced above. Failure of the CONSULTANT to provide these certificates may result in termination of the agreement or claims made against the CONSULTANT for any insurance claims made in conjunction with this project.

The CONSULTANT shall furnish the schedule of insurance carried under this contract in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date and expiration date of all policies. This Certificate shall be in six (6) counterparts and when the contract is signed by the CONSULTANT, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents. The insurance carrier or its agent shall also certify on these documents that it will notify the CITY by registered mail at least twenty (20) days prior to any cancellation or non-renewal of these coverages.

XVI. FINDINGS CONFIDENTIAL

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONSULTANT under this agreement are the property of the CITY. The CONSULTANT agrees that any such documents shall not be made available to any individual or organization other than appropriate CITY officials without prior written approval of the CITY. Nothing contained in this paragraph shall be construed to prevent the CONSULTANT from making information, reports and documents available to those individuals or firms directly concerned with the project involved with prior written agreement of the CITY.

XVII. SUBCONTRACTS

The CONSULTANT shall utilize no subcontracts for carrying out the services to be performed under this agreement without the written approval of the CITY.

XVIII. ENTIRE AGREEMENT

This agreement constitutes the entire understanding of the parties.

XIX. BINDING EFFECT

This agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

XX. CONTINUING OBLIGATION

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.

XXI. REFERENCE

Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.

XXII. INTERPRETATION

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

XXIII. PREAUDIT

This contract has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as evidenced by City Purchase Order No. _____ which is incorporated as if fully set out.

XXIV. MINORITY BUSINESS ENTERPRISE (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.
2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general contractor or all construction projects shall exercise all necessary and reasonable steps to insure

that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (50%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (50%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.

XXV. IMMUNITY NOT WAIVED

This agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the CITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this agreement.

XXVI. SAVING CLAUSE

If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful, or unconstitutional by any court

of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

XXVII. Other Laws and Regulations

CONSULTANT will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder.

XXVIII. AMENDMENTS

This agreement shall not be modified or otherwise amended except in writing signed by the parties.

XXIX. NON-DISCRIMINATION

CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY'S option, in a termination or suspension of this agreement in whole or in part.

IN WITNESS WHEREOF, the CITY has caused this agreement to be duly executed in its name and behalf and the CONSULTANT has caused this agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed, and attested to.

CITY OF WILMINGTON, NORTH CAROLINA

BY: _____
Sterling B. Cheatham, City Manager

WITNESS:

Steven D. Bridges, Purchasing Manager

APPROVED AS TO FORM:

Thomas C. Pollard, City Attorney

CITY ACCOUNTANT'S CERTIFICATION

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act this the _____ day of _____, 2005.

W. Brent McAbee, Finance Officer

BY: _____
President, Vice President, Assistant Vice President

ATTEST:

Secretary, Assistant Secretary, Trust Officer

(CORPORATE SEAL)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that the corporation's Secretary, Assist. Secretary or Trust Officer, Mr./Mrs./Ms. _____ personally came before me this day and acknowledged that he (she) is the _____ of _____, a Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assist. Vice President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and attested by himself (herself) as its Secretary, Assist. Secretary or Trust Officer.

WITNESS my hand and official seal this the _____ day of _____, 2005.

Notary Public

My commission expires: _____

(SEAL)